

Readopt with amendment Ac 201 – Ac 203, Ac 205 – Ac 211, and Ac 213, eff. 1-26-2007 (Doc. #8810), to read as follows:

CHAPTER Ac 200 PRACTICE AND PROCEDURE

PART ~~Ac 201~~ INTRODUCTION AND DEFINITIONS

~~Ac 201.01 Purpose.~~ The board shall conduct proceedings for the purpose of acquiring sufficient information to make fair and reasonable decisions on matters within its statutory jurisdiction, including decisions on applications and complaints filed against licensees. These proceedings shall secure a just, efficient and accurate resolution.

~~Ac 201.02 Definitions.~~

(a) "Hearing" means the receipt and consideration by the board of data or argument, or both, by methods appropriate to the circumstances, and includes:

- ~~(1) Conducting trial-type evidentiary proceedings;~~
- ~~(2) Directing the filing of exhibits, affidavits, memoranda, briefs, or oral arguments;~~
~~or~~
- ~~(3) Any combination of these or similar methods.~~

(b) "Party" means a "party" as defined in RSA 541-A:1, XII.

(c) "Order" means a document issued by the board:

- ~~(1) Establishing procedures to be followed in an adjudicatory or nonadjudicatory proceeding;~~
- ~~(2) Granting or denying a petition or motion;~~
- ~~(3) Requiring a person to do, or to abstain from doing something; or~~
- ~~(4) Determining a person's rights to a license or other privilege established by RSA 309-B or rules of this chapter.~~

~~Ac 201.03 Failure to Comply with Rules.~~

(a) ~~Failure to comply with the rules of this chapter shall result in:~~

- ~~(1) Refusal of a noncompliant document for filing;~~
 - ~~(2) Denial or conditional denial of a noncompliant application, petition, or motion;~~
~~or~~
 - ~~(3) Issuance of an order adverse to noncompliant person.~~
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~~PART Ae 202 APPEARANCE BEFORE THE BOARD~~

~~Ae 202.01 Representatives.~~

~~(a) A person appearing before the board may, but shall not be required to, be represented by an attorney or a competent individual who:~~

~~(1) Is a New Hampshire licensed attorney who has filed a written appearance with the board containing his or her business address and telephone number; or~~

~~(2) Is not an attorney, but has filed a written notice of appearance as a representative.~~

~~(b) The notice required in (a) above shall briefly describe the proposed representative's qualifications, provide the proposed representative's daytime address and telephone number, and be signed by both the proposed representative and the party who would be represented.~~

~~(c) Corporations, partnerships and other legal entities that are not natural persons shall be represented only by an officer, director, partner or similar official of such entity, an attorney, or a competent individual who has express and written authority to act on behalf of the entity and:~~

~~(1) Is a New Hampshire licensed attorney who has filed a written appearance with the board containing his or her business address and telephone number; or~~

~~(2) Is not an attorney, but has filed a written notice of appearance as a representative.~~

~~(d) The board shall, after providing notice and opportunity for hearing, restrict an individual from acting as a representative before the board upon a finding of misconduct.~~

~~(f) A finding of misconduct shall be based on acts or failures to act which result in one or more of the following consequences in a matter pending before the board:~~

~~(1) Obstruction of fair due process;~~

~~(2) Disruption of the orderly conduct of procedure; or~~

~~(3) Prejudice to the rights of other parties.~~

~~PART Ae 203 TIME PERIODS~~

~~Ae 203.01 Computation of Time. Any time period specified in an order shall begin with the day following the act, event, or default, and shall include the last day of the period, unless it is Saturday, Sunday, or state legal holiday, in which event the period shall run until the end of the next business day. When the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded from the computation.~~

~~Ae 203.02 Change in Allowed Times. A motion for a change of time shall be granted upon concurrence with all parties.~~

~~Ae 203.03 Limitations. A motion to change time shall be filed at least 3 business days prior to the event in question.~~

PART ~~Ae 205~~ PLEADINGS, COMPLAINTS, AND MOTIONS

~~Ae 205.01 Pleadings:~~

~~(a) The only pleadings permitted shall be petitions, other than rulemaking, and replies to petitions. Complaints against licensees shall be a particular type of petition and shall be governed exclusively by Ae 205.02. Applications shall not be considered pleadings.~~

~~(b) All petitions shall contain:~~

- ~~(1) The name and address of the petitioner;~~
- ~~(2) The name and address of the petitioner's representative, if any;~~
- ~~(3) A concise statement of the facts that caused the petitioner to request the board to act;~~
- ~~(4) The action that the petitioner wishes the board to take; and~~
- ~~(5) The identification of any statutes, rules, orders, or other authority that entitles the petitioner to request the board to act.~~

~~(c) Board replies to petitions shall contain:~~

- ~~(1) The name and address of the petitioner;~~
- ~~(2) The name and address of the representative of the petitioner, if any;~~
- ~~(3) A statement addressing each fact alleged in the petition pursuant to Ae 205.01(b)(3);~~
- ~~(4) A statement addressing the authority identified by the petitioner pursuant to Ae 205.01(b)(5);~~
- ~~(5) A concise response to each statement noted in Ae 205.01(b)(3);~~
- ~~(6) The identification of any statutes, rules, orders, or other authority, not identified in the petition, having a bearing upon the subject matter of the petition; and~~
- ~~(7) The action the board took.~~

~~(d) Replies shall be filed within 90 days from the date of the petition.~~

~~Ae 205.02 Complaints of Licensee Misconduct:~~

~~(a) Complaints alleging misconduct by licensees noting violations of RSA 309-B:6, II, shall be in writing and filed at the board's offices in Concord, New Hampshire.~~

~~(b) Anyone filing a complaint shall provide the following information:~~

- ~~(1) The name and address of the complainant;~~

- ~~(2) The name and address of the licensee against whom the complaint is directed;~~
- ~~(3) Date, time, place and summary of alleged violation(s);~~
- ~~(4) Name and address of those having knowledge of the alleged violations;~~
- ~~(5) Specific provision of RSA 309-B:6 and, if applicable, sections of the rule upon which the complaint is based;~~
- ~~(6) Other data pertinent to the complaint.~~

~~(c) A complaint shall not be accepted that alleges acts of misconduct that occurred more than 6 years before the filing date unless it also alleges that these acts could not have reasonably been discovered during all or some substantial part of the intervening 6 year period.~~

~~(d) A complaint shall be treated as a petition to the board within the meaning of RSA 541-A: 4.~~

~~(e) The board shall, within 60 days of the receipt of a complaint, review said complaint and dispose of said complaint as follows:~~

- ~~(1) Dismiss the complaint on the grounds that it does not set forth probable cause for a determination of a violation of RSA 309-B:6,I;~~
- ~~(2) Appoint an investigating officer to investigate the complaint and report to the board; or~~
- ~~(3) Determine that, based on the complaint, that probable cause does exist that there has been a violation of RSA 309-B:6 and commence disciplinary hearing pursuant to RSA 309-B:8 and Ae 203.~~

~~Ae 205.03 Motions and Objections Thereto:~~

~~(a) Unless presented during an oral session of a proceeding, all motions and objections shall be in writing.~~

~~(b) All motions and objections shall state clearly and concisely:~~

- ~~(1) The purpose;~~
- ~~(2) The relief sought;~~
- ~~(3) The statutes, rules, orders, or other authority authorizing the relief sought; and~~
- ~~(4) The facts claimed to constitute grounds for the relief.~~

~~(c) Replies by a party to a petition shall state clearly and concisely:~~

- ~~(1) The defense of the party filing the reply;~~
- ~~(2) The action which the party filing the reply wishes the board to take;~~
- ~~(3) The statutes, rules, orders, or other authoritative relief in defense of the motion;~~

and

~~(4) Any facts that are additional to, or different from, the facts stated.~~

~~(d) An objection to a petition or motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in the motion shall constitute the admission of that fact for the purpose of the motion. In the event a party filing an objection to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying such fact.~~

~~(e) Motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.~~

~~(f) Board replies to petitions or motions shall be filed within 90 days after the filing of the motion. Failure by the board to address a motion within 90 days after filing shall constitute acceptance by the board of the motion.~~

Ac 205.04 Appointment of Investigating Officer.

~~(a) If the board shall vote to investigate a complaint pursuant to subsection 205.02(e)(2), the board shall appoint an investigating officer. The investigating officer shall be a member of the board, or some other person otherwise qualified by reason of experience or professional or academic credentials.~~

~~(b) If the investigating officer is a member of the board, that person shall not vote in any further deliberations with respect to the complaint as to the existence of probable cause under subsection (a) or in the hearing under Ac 206.~~

~~(c) Upon the appointment of the investigating officer, the board shall notify the respondent accountant and the complainant, in writing, of the appointment.~~

~~—— (d) The investigating officer shall perform the following duties:~~

~~(1) Provide a copy of the written complaint and a copy of Part Ac 202 to the respondent accountant;~~

~~(2) Request that the respondent accountant provide a written response returnable to the board within 30 days of receipt; and~~

~~(3) Contact and question each party individually about the complaint, seeking to determine if grounds exist upon which an informal settlement can be reached.~~

~~(e) If possible, the investigating officer shall arrange an informal settlement between the parties. If an amicable settlement can be arranged, the investigating officer shall submit the proposal to the board which shall accept or reject the proposal. If the proposal is rejected by the board, the board shall state its reasons for rejection in writing.~~

~~(f) If no settlement is possible, or the investigating officer deems such a disposition inappropriate under the circumstances, the investigating officer shall submit a statement to the board, based upon the officer's investigation, that in the officer's opinion:~~

~~(1) The complaint does not set forth probable cause for a determination of a violation of RSA 309-B:6, I and a hearing should not be held; or~~

~~(2) The complaint does set forth probable cause for a determination of a violation of RSA 309-B:6, I and a hearing should be held.~~

~~(g) The investigating officer shall provide a copy of the complaint, the reply, and all pertinent information to each board member for his or her review.~~

~~(h) The board shall decide, after reviewing the investigating officer's report, whether to hold a hearing. The decision shall be by vote of the board. If it is decided that a hearing is not warranted, a decision shall be sent to both parties by the chair of the board indicating that for reasons enumerated, the board has determined that no hearing is warranted and the matter shall be closed, subject to reopening in the event newly discovered evidence shall warrant such action. If the board decides that a hearing is warranted, the board shall follow the procedure set forth in Ae 203.~~

~~PART Ae 206 DISCIPLINARY PROCEEDINGS~~

~~Ae 206.01 Applicability. This part shall govern all disciplinary proceedings conducted by the board, which shall not include rule making and declaratory rulings.~~

~~Ae 206.02 Commencement.~~

~~(a) The board shall commence an adjudicatory proceeding by issuing a notice to the parties at least 15 days before the first scheduled hearing date or first pre-hearing conference.~~

~~(b) The notice commencing an adjudicatory proceeding shall:~~

~~(1) Identify the parties to the proceeding as of the date of the order and specify a deadline for the submission of petitions to intervene or statements by complainants that they intend to participate as a party;~~

~~(2) Briefly summarize the subject matter of the proceeding, and identify the issues to be resolved;~~

~~(3) Attach any complaint against the licensee that forms, in whole or in part, the basis of the issues to be resolved;~~

~~(4) Specify the legislative authority for the proposed action, and identify any applicable board rules;~~

~~(5) Specify the type of procedures to be followed;~~

~~(6) Specify the date by which, and the address where, appearances or motions by representatives shall be filed;~~

~~(7) Specify the date, time, and location of an initial pre-hearing conference or dates for an oral hearing;~~

~~(8) Identify the presiding officer for the proceeding if other than the chairperson of the board;~~

~~(9) Identify any confidentiality requirements applicable to the proceeding; and~~

~~(10) Contain such other information as the circumstances of the case warrant including, but not limited to orders consolidating or severing issues in the proceeding with other proceedings or orders directing the production of documents.~~

~~Ac 206.03 Docketing, Service of Notice, Public Notice.~~

~~(a) The board shall assign each adjudicatory proceeding a docket number, and serve the hearing notice upon all parties to the proceeding. The hearing notice shall be served upon the respondent by means of certified mail.~~

~~(b) Service of all subsequent orders, decisions and notices issued by the board, including any amendments to the hearing notice, shall be served upon the parties, including any intervenors, by first class mail.~~

~~(c) Orders, notices, and decisions of the board, and motions, memoranda, exhibits, and other documents and data submitted to the board in a docketed case shall be kept in a docket file and made available for public inspection in the board's office except to the extent that confidentiality has been provided for under the provisions of law.~~

~~Ac 206.04 Intervention.~~

~~(a) Petitions for intervention may be filed any time after commencement of a proceeding.~~

~~(b) A petitioner for intervention shall state in the petition:~~

~~(1) The petitioner's interest in the subject matter of the hearing;~~

~~(2) The petitioner's position with respect to the subject matter of the hearing;~~

~~(3) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and~~

~~(4) Any other reasons why the petitioner should be permitted to intervene.~~

~~(c) Petitions for intervention shall be granted if the petitioner has an interest in the proceeding and has clearly stated this interest.~~

~~(d) Orders granting intervention shall be subject to modifications.~~

~~(e) A person filing a complaint that becomes the subject of a disciplinary hearing shall be served with the hearing notice and notified of the right to participate in the proceeding as an intervening party.~~

~~(f) A complainant shall become party to a disciplinary hearing only if he or she files a motion to intervene within the time period set forth in the notice. The complainant shall be an intervening party if such motion is granted by the board. The board and the party against which the complaint is filed shall be the parties to the proceeding as defined in Ac 201.02(b).~~

~~(g) Once granted leave to intervene, intervenors shall take the proceeding as they find it and no portion of the proceeding shall be repeated because of the fact of intervention.~~

~~Ac 206.05 Rights to Representation.~~

~~—— (a) Any party in an adjudicatory proceeding may be represented by counsel or lay representation, but such person appearing on behalf of a party shall first file a letter, in accordance with Ac 202.01.~~

~~—— (b) Requests to the board to provide counsel shall be denied and the board shall assume no responsibility for expenses of any party.~~

~~Ac 206.06 Prehearing Conferences.~~

~~(a) At any time following the commencement of an adjudicatory proceeding, the board shall, upon motion, or upon its own initiative, encourage all parties to attend one or more prehearing conference(s) to aid in the disposition of the proceeding.~~

~~(b) The following shall be considered at a prehearing conference:~~

- ~~(1) Opportunities and procedures for settlement;~~
- ~~(2) Opportunities and procedures for simplification of the issues;~~
- ~~(3) Possible amendments to the pleadings;~~
- ~~(4) Possible admissions of facts and of documents to avoid unnecessary proof;~~
- ~~(5) Possible limitations on the number of witnesses;~~
- ~~(6) Possible changes to the standard procedures which would otherwise govern proceeding;~~
- ~~(7) The distribution of written testimony, if any, and exhibits to the parties;~~
- ~~(8) Possible consolidation of the examination of witnesses by the parties; and~~
- ~~(9) Any other matters which might contribute to the prompt and orderly conduct of the proceedings.~~

~~(c) The board shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record. Matters decided at a prehearing conference shall be reflected in an appropriate order.~~

~~Ac 206.07 Discovery and Disclosure of Information. Upon the written request of a party, the board shall disclose to the parties any information, not privileged and subject to disclosure under RSA 91-A, in the possession of the board, that is pertinent to the subject matter of the proceeding.~~

~~Ac 206.08 Exchange of Information.~~

~~(a) Parties shall attempt to agree among themselves concerning the mutual exchange of relevant information. If these efforts fail, a party wishing to initiate discovery against another party, shall do so, by motion and shall identify the type of discovery requested.~~

~~(b) Motions for discovery shall be granted if:~~

- ~~(1) The requested method of discovery is reasonable and the requested discovery~~

~~will not cause material unfairness or unreasonable expense to any party;~~

~~(2) The requesting party has acted diligently and the requested discovery will not unreasonably delay the proceeding; and~~

~~(3) The discovery is necessary for a full and fair presentation of relevant evidence at hearing.~~

~~Ac 206.09 Subpoena:~~

~~(a) Subpoena for the attendance of witnesses or the production of evidence in disciplinary proceedings shall be issued only upon the order of the board.~~

~~(b) A subpoena shall be issued on the initiative of the board or in response to the motion of a party.~~

~~(c) A party requesting a subpoena shall attach a copy of the proposed subpoena to its motion. The requesting party shall be responsible for the service of the subpoena and payment of any witness fee and mileage expenses that might be required. If the subpoena is issued on the initiative of the board, the board shall be responsible for any fees or mileage.~~

~~(d) The person to whom the subpoena is directed may, within 10 days after service of the subpoena, or before the date specified by the board in the subpoena for compliance therewith, whichever is earlier, file a motion to quash or modify the subpoena.~~

~~(e) Unless the board quashes or modifies a subpoena based upon a motion filed pursuant to (d) above, the person to whom the subpoena is directed shall comply with the subpoena, within the time prescribed in the subpoena.~~

~~(f) A subpoena shall be served by any person who is 18 years of age or older, and in the manner authorized for service of subpoenas in the New Hampshire superior court. The fact of service shall be written on the reverse of the original copy of the subpoena by the person making service and a copy shall be immediately returned to the board by the person making service.~~

~~(g) Should any person fail to comply with a subpoena issued pursuant to this section, the board shall seek judicial enforcement~~

~~(h) The board's evaluation of a request to authorize a subpoena, or to quash or modify a subpoena, shall be based upon the need for full and fair presentation of relevant evidence at hearing and the criteria set forth in Ac 206.08 for evaluation of requests for discovery generally.~~

~~Ac 206.10 Evidence:~~

~~(a) Proceedings shall not be conducted under the rules of evidence, but the evidentiary privileges recognized by the law of New Hampshire shall apply to proceedings under this chapter.~~

~~(b) All data that will reasonably assist the board arrive at the truth shall be admissible.~~

~~(c) Evidence shall be submitted in written or oral form to assure the full and fair disclosure of the facts.~~

~~(d) If the board notices a fact, it shall so state, and permit any party the opportunity to show the contrary.~~

~~(e) Witnesses appearing before the board shall testify under oath or affirmation.~~

~~(f) The board shall cause a tape recording or stenographic record to be made of hearings and pre-hearing conferences. This record shall not be transcribed unless a request is made by a party who also agrees to pay the cost of the transcription. If the board elects to transcribe the record, upon request by the parties or its own initiative, the party so requesting shall pay the fee for transcription or copies.~~

~~Ae 206. 11 Burden of Proof.~~

~~(a) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.~~

~~(b) Without limiting the generality of Ae 206.10(a), all moving parties and all petitioners shall have the burden of persuading the board that their motion or petition should be granted.~~

~~Ae 206. 12 Methods of Proceeding.~~

~~(a) Where there are no disputes as to the material facts involved in the subject matter of the proceeding, offers of stipulation shall be entertained.~~

~~(b) Where facts material to the subject matter of the proceedings are in dispute, the proceeding shall consist of a trial-type evidentiary hearing with the subsequent submission of memoranda.~~

~~(c) Oral argument and brief opening and closing statements, shall be permitted when requested in a written motion that outlines the proposed arguments. Written arguments in the form of legal briefs or memoranda shall be permitted subject to such filing schedules as the board shall require.~~

~~(d) The board shall schedule a hearing or require the submission of additional data at any time, including the ordering of supplemental hearings, when necessary to for full and accurate disclosure of the facts.~~

~~Ae 206. 13 Inquiry By Board Members. Except as provided by RSA 309-B:7, and RSA 309-B:8 a and subject to the direction of the presiding officer who shall regulate the time and manner of speaking in an orderly fashion, board members present during adjudicative proceedings shall question witnesses and make such inquiry of witnesses, as they believe appropriate for a full and true disclosure of the facts.~~

~~Ae 206. 14 Proposed Findings of Fact and Conclusions of Law.~~

~~(a) Any party may submit proposed findings of fact and conclusions of law.~~

~~(b) The board shall encourage parties to submit proposed findings of fact and conclusions of law. The board shall include individual rulings upon such proposed findings or conclusions as part of its final decision.~~

~~Ae 206. 15 Ex Parte Communications. Once a notice of hearing has been issued in an adjudicatory proceeding, no party shall communicate with any member of the board, or the presiding officer concerning the merits of the case except upon notice to all parties and granting an opportunity for such party or parties to participate. In accordance with the rules of this~~

chapter, no party shall cause another person to make such communications or otherwise engage in conduct prohibited by RSA 541-A:21.

~~PART Ae 207 PRESIDING OFFICER~~

~~Ae 207.01 Designation.~~

~~(a) Adjudicatory proceedings commenced by the board shall be conducted by a presiding officer.~~

~~(b) If other than the chairperson, the board shall appoint a board member or a member of the board's staff to serve as presiding officer.~~

~~Ae 207.02 Authority of Presiding Officer.~~

~~(a) The presiding officer shall possess all authority with respect to the procedural aspects of adjudicatory proceedings that would be possessed by the board itself, including, but not limited to, the power to administer oaths and affirmations, direct the course of the proceedings, and decide procedural and discovery issues.~~

~~(b) The presiding officer shall receive no testimony or oral argument on the merits of the case unless at least 3 board members, including the presiding officer, are present. In instances where the credibility of a witness giving testimony is material to the outcome of the adjudication, only those members of the board present for such testimony shall participate in the final decision.~~

~~(c) Except in proceedings conducted pursuant to Ae 207.02(d), the presiding officer shall, to the extent consistent with the fair and orderly conduct of the proceeding, permit board members who are present during any stage of an adjudicatory proceeding to query the witnesses.~~

~~(d) The presiding officer shall not accept final offers of settlement or impose consent decrees, but shall assist the parties in reaching settlements. When a settlement has been proposed in writing, the presiding officer shall refer it to the board for decision, but shall not stay the proceeding while the board is deliberating the settlement proposal.~~

~~(e) The presiding officer shall not decide motions or enter orders which finally resolve the proceeding or stay the proceeding for more than 30 days. Potentially dispositive motions shall be referred to the board or deferred until the close of the record.~~

~~(f) If the presiding officer believes that a default or similar final order should enter against a party, the presiding officer shall issue a written recommendation to the board, with service on the parties, and the board shall take appropriate action after allowing the parties 10 days to file objections thereto.~~

~~Ae 207.03 Exceptions to Rulings By the Presiding Officer.~~

~~(a) There shall be no interlocutory appeal to the board of procedural or discovery orders made by the presiding officer.~~

~~(b) After the close of the record, the parties shall be provided 10 days to submit written exceptions to rulings of the presiding officer. The board shall rule upon any such exceptions and shall reopen or modify the record, if necessary or appropriate to effect relief.~~

~~PART Ae 208 RECONSIDERATION AND STAY~~

Ac 208.01 Motion for Reconsideration or Rehearing.

~~(a) An adjudicatory order of the board shall not be final until the date it is served upon the parties pursuant to Ac 204.03(c).~~

~~(b) Within 30 days after service of a final adjudicatory order of the board, any party may file a motion for reconsideration. No distinction shall be made between the terms "reconsideration" and "rehearing" pursuant to RSA 309-B:14.~~

~~(c) A motion for reconsideration shall:~~

~~(1) Include any memorandum of law the petitioner wishes to submit;~~

~~(2) Identify each error of fact, error of reasoning, or erroneous conclusion contained in the final order that the moving party wishes reconsidered; and~~

~~(3) Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party.~~

~~(d) The board shall grant or deny the motion, or any part thereof, on its merits, or treat the motion as a motion for reopening, and grant it pending the receipt of such additional data or additional argument as it considers necessary.~~

Ac 208.02 Reconsideration on the Board's Own Motion.

~~(a) Within the time frame specified in Ac 208.01(b), the board shall reconsider, revise, reverse or affirm any final action on its own motion.~~

~~(b) If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the board believes further argument or data should be considered, an appropriate order providing the parties with notice and opportunity to be heard shall be issued before any revision is made in the board's previous action.~~

Ac 208.03 Stay of Board Orders.

~~(a) A stay of board action shall be specifically requested. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but a motion for stay may be combined with a motion for reconsideration.~~

~~(b) A motion for stay shall be considered only if it is filed within the time period for requesting reconsideration specified by Ac 208.01(b), and shall demonstrate good cause sufficient to warrant the stay of action by the New Hampshire superior court.~~

~~(c) The board, acting on its own motion, shall stay the effect of any board order within the time period specified in Ac 208.01(b).~~

PART Ac 209 CONSOLIDATION AND SEVERANCE

~~Ac 209.01 Consolidation. Whenever it shall appear to the board, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues, the board shall, as fairness and efficiency permit, consolidate those proceedings for hearing, or~~

~~decision, or both.~~

~~Ac 209.02 Severance. Whenever it shall appear to the board, upon motion or its own initiative, that injury to the substantial rights of a party or undue delay may be thereby avoided, the board shall, as fairness and efficiency permit, sever one or more issues from a proceeding, and dispose of those issues in another proceeding.~~

~~PART Ac 210 COMPLAINTS, INVESTIGATIONS AND HEARINGS~~

~~Ac 210.01 Initiation of Disciplinary Proceedings.~~

~~(a) The board shall undertake investigations and disciplinary hearings, in response to a written complaint filed in accordance with Ac 205.02 or in response to other information that comes to the board's attention.~~

~~Ac 210.02 Processing of Complaints.~~

~~(a) Upon receipt of a complaint, the board shall commence an investigation pursuant to Ac 210.03.~~

~~(b) The board shall dismiss a complaint at any time for failure to state a cause of action, failure to respond to a request for information, or failure to participate in any investigation or hearing ordered by the board. The board shall, however, independently pursue allegations of misconduct alleged against a licensee under the board's jurisdiction in the event a complaint is dismissed, if further inquiry is warranted by the nature and substance of the allegations.~~

~~(c) At any stage of the board's investigation of the allegations in a complaint, the board shall, with the consent of the licensee, issue a final settlement agreement or consent order that imposes discipline upon the licensee and terminates further disciplinary action in whole or part.~~

~~(d) Action under (c) above, shall not be taken unless:~~

~~(1) The complainant receives notice and an opportunity to submit written comments concerning the proposed settlement or consent decree; and~~

~~(2) There are no material facts in dispute between the licensee and the complainant, and the discipline imposed by the board would not be greater than that imposed by the proposed settlement or consent decree.~~

~~(e) At any time during the board's investigation of the allegations in a complaint, the board shall encourage the licensee and the complainant to participate in mediation on a timely and good faith basis with a non-board member who agrees to act as a mediator.~~

~~(f) When mediation is suggested under (e), above, the mediator shall attempt resolution of the dispute between the complainant and the licensee, and, within 60 days of consensus on mediation, shall submit a written report to the board.~~

~~(g) The report noted under (f), above, shall contain:~~

~~(1) A written settlement agreed to by the parties; or~~

~~(2) A report of the circumstances that appear to prevent settlement of the issues between the parties.~~

~~(h) Upon receiving the mediator's report, the board shall with consent of complainant discontinue its investigation, or proceed with further disciplinary proceedings.~~

~~(i) Information concerning the misconduct issues alleged by the complainant and disclosed to the mediator during good faith mediation shall be included in the report if stipulated to by the parties.~~

~~(j) Disciplinary action against the licensee shall be based upon the board's evaluation of the seriousness and credibility of evidence submitted during the hearing.~~

~~(k) Information gathered during investigations shall not be released to the public until an evidentiary hearing is held and such information is introduced into the record.~~

~~(l) Information provided during an evidentiary hearing shall be considered public information.~~

Ac 210.03 Investigations.

~~(a) The board shall conduct such investigations as necessary to examine acts of possible misconduct that come to its attention through complaints or other means.~~

~~(b) The board shall appoint a member of its staff, or one or more of its members, or other person otherwise qualified under Ac 205.04(a) to conduct the investigation. When a board member participates in an investigation, that board member shall not participate in any further actions of the board concerning the subject matter of the investigation.~~

~~(c) The board shall determine the type, form and extent of an investigation. An informal investigation shall be conducted without prior order of the board and shall be subject to conversion into a formal investigation by issuance of an order of investigation as outlined in (e) below.~~

~~(d) A formal investigation shall be commenced for the purpose of obtaining documents, testimony, or otherwise gathering information relevant to matters within the board's jurisdiction when a formal investigation would be more effective than an informal investigation in obtaining the information sought by the board.~~

~~——(e) A formal investigation shall be commenced by the issuance of an order of investigation specifying:~~

~~(1) The statutory or regulatory authority for the investigation;~~

~~(2) Any statutes or rules believed to have been, or about to be, violated;~~

~~(3) The identity of the persons, or class of persons, that are subject of the investigation;~~

~~(4) The general nature of the conduct being investigated;~~

~~(5) The identity of the investigating officer or committee;~~

~~(6) The date upon which the investigating officer shall report his or her findings and recommendations to the board;~~

~~(7) Other provisions relevant to the issues under investigation.~~

~~(f) Investigations shall not commence a disciplinary hearing and shall not constitute an allegation of misconduct against a licensee.~~

~~(g) When an investigation occurs, an investigator designated by the board shall contact such persons and examine such records and other documents as are reasonably necessary to make a recommendation as to whether further board action should be taken on the allegations in question.~~

~~(h) Investigations, including those based upon allegations in a complaint shall be conducted on an ex parte basis.~~

~~(i) Following the investigation, the investigator shall make a written report and recommendation to the board as to whether there is reasonable basis to conduct further disciplinary proceedings.~~

~~(j) Investigatory reports and all information gathered by an investigator shall be confidential, provided that:~~

~~(1) The investigator's report shall be made available to the parties in any adjudicatory proceeding resulting therefrom; and,~~

~~(2) The board shall provide information gathered in disciplinary investigations to:~~

~~a. Law enforcement agencies;~~

~~b. Other certifying boards or agencies of New Hampshire or other jurisdictions;~~

~~c. Board investigators or prosecutors;~~

~~d. Expert witnesses or assistants retained by board prosecutor or investigators in the same or related disciplinary matters; or~~

~~e. Persons to whom the licensee has given a release.~~

~~(k) The board shall seek the advice of counsel at the New Hampshire department of justice if questions arise regarding whether release of investigative information to other certifying boards or agencies, in New Hampshire or other jurisdictions, would violate RSA 91-A:5, IV.~~

Ac 210.04 Disciplinary Hearings.

~~(a) Adjudications in disciplinary matters shall be conducted in accordance with Ac 206. The presiding officer, shall set forth in writing the hearing order, pre-hearing order, or other appropriate order served upon the parties.~~

~~(b) A hearing notice shall be amended at any time prior to the issuance of a final order upon motion of a party or on the board's own motion based upon additional or new information. The parties shall receive at least 15 days notice and an opportunity to be heard on any amended issues.~~

~~(c) The licensee shall respond in writing to stated misconduct allegations by responding to each allegation within the time period specified by the board in the hearing notice. Failure to so respond shall result in an order of default, including disciplinary sanctions, against the licensee. The licensee shall have a minimum of 30 days to respond.~~

~~(d) The decision to appoint a prosecuting or investigatory attorney shall not be the subject of a motion by any party. The board shall appoint an attorney to represent the board at any time during the course of a disciplinary hearing, if such expertise is required.~~

~~(e) Pre hearing conferences in disciplinary proceedings shall not be open to the public.~~

~~(f) The parties shall submit written memoranda of law or fact, proposed findings of fact and conclusions of law, or present oral argument on some or all aspects of the proceeding when requested to do so by the presiding officer.~~

~~(g) The parties shall, as ordered by the presiding officer, participate in one or more supplementary hearings for the purpose of receiving additional evidence relevant to the disciplinary proceeding. An order scheduling a supplemental hearing shall be issued by the presiding officer at any time prior to the issuance of a final order in the proceeding.~~

~~PART Ae 211 PROCEEDINGS BASED UPON DISCIPLINARY ACTION TAKEN IN OTHER JURISDICTIONS~~

~~Ae 211.01 Reciprocal Discipline.~~

~~(a) When the board receives notice that a licensee has been subjected to disciplinary action related to dishonesty or misconduct by the licensing authority of another jurisdiction, the board shall issue an order directing the licensee to demonstrate why reciprocal discipline should not be imposed in New Hampshire pursuant to RSA 309-B:6, I(b).~~

~~(b) The board shall impose any disciplinary sanction authorized by RSA 309-B:6, in a disciplinary proceeding brought under this rule, but shall provide specific notice to the licensee if it intends to consider sanctions that exceed those imposed by the other jurisdiction.~~

~~PART Ae 213 LICENSE SURRENDER WHEN DISCIPLINARY ALLEGATIONS ARE PENDING~~

~~Ae 213.01 Effects of License Surrender.~~

~~(a) A licensee may surrender the license at any time.~~

~~(b) Surrender or non-renewal of license shall not preclude the board from investigating or completing a disciplinary proceeding based upon the licensee's conduct while the license is still in effect. Such investigations and proceedings shall be handled in the same manner as other disciplinary investigations and proceedings.~~

~~(c) A licensee who surrenders a license shall have no right or privilege in New Hampshire except as shall be specifically set forth in a board order or settlement agreement. A licensee who reapplies for a license in New Hampshire after surrender shall meet all the requirements in effect for new applicants as set forth in statute or rules at that time.~~

~~(d) A licensee who surrenders his or her license as part of a settlement of pending misconduct allegations shall make a written settlement offer to the board before the close of the~~

~~record in a disciplinary hearing.~~

~~(e) Any settlement agreement reached under (d), above, shall include the following concessions:~~

~~(1) That license surrender has occurred in settlement of pending disciplinary allegations;~~

~~(2) That all or some specifically identified part of the material facts pertaining to the allegations are true; and~~

~~(3) That the pending allegations shall be issues to be resolved in any future application the licensee may submit in New Hampshire.~~

~~(f) The fact of license surrender pending disciplinary action and the terms of any settlement agreement pertaining thereto shall be distributed to all relevant licensing authorities and data bank in the same manner as a final decision containing specific findings of dishonesty or misconduct.~~

PART Ac 201 PURPOSE AND SCOPE

Ac 201.01 Purpose. The board shall conduct proceedings for the purpose of acquiring sufficient information to make fair and reasonable decisions on matters within its statutory jurisdiction, including decisions on applications and complaints filed against licensees. These proceedings shall secure a just, efficient, and accurate resolution.

Ac 201.02 Scope. The rules of this chapter shall apply to all administrative proceedings conducted by the board and shall be in addition to applicable requirements of RSA 541-A.

PART Ac 202 DEFINITIONS

Ac 202.01 Definitions.

(a) “Adjudicative proceeding” means “adjudicative proceeding” as defined in RSA 541-A:1, I, namely, “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.”

(b) “Appearance” means a written notification to the board that a party, an intervenor or the representative of a party or intervenor intends to actively participate in an adjudicative proceeding.

(c) “Complaint” means an allegation of misconduct by a licensee, and which has been submitted in writing to the board.

(d) “Contested case” means “contested case” as defined in RSA 541-A:1, IV, namely, “a proceeding in which the legal rights, duties, or privileges of a part are required by law to be determined by an agency after notice and an opportunity for hearing.”

(e) “Declaratory ruling” means, “declaratory ruling” as defined by RSA 541-A:1, V, namely, “a ruling by the board as to the specific applicability of any statutory provision or of any rule or order” of the board.

(f) “Hearing” means the process by which the board receives and considers evidence, argument, or both, by methods appropriate to the circumstances, and includes:

- (1) Conducting trial-type evidentiary proceedings; or
- (2) Directing the filing of exhibits, affidavits, memoranda, briefs, or oral arguments; or
- (3) Any combination of these or similar methods.

(g) “Intervenor” means a person without the status of a party but participating in an adjudicative proceeding to the extent permitted by the presiding officer acting pursuant to RSA 541-A:32.

(h) “License” means “license” as defined by RSA 541-A:1, VIII, namely, “the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.”

(i) “Motion” means a request to the presiding officer for an order or ruling directing some act to be done in favor of the proponent of the motion, including a statement of justification or reasons for the request.

(j) “Order” means a document issued by the board:

- (1) Establishing procedures to be followed in an adjudicative or nonadjudicative proceeding;
- (2) Granting or denying a petition or motion;
- (3) Requiring a person to do, or to abstain from doing something; or
- (4) Determining a person’s rights to a license or other privilege established by RSA 309-B or the rules of the board.

(k) “Party” means “party” as defined by RSA 541-A:1, XII, namely, “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.” The term is intended to encompass all principal participants including intervenors, but not witnesses, unless the rule or context clearly indicates otherwise.

(l) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the board.

(m) “Petition” means a written request made outside the context of an adjudicative proceeding and seeking a particular action by the board.

(n) “Presiding officer” means “presiding officer” as defined by RSA 541-A:1, XIV, namely, “that individual to whom the board has delegated the authority to preside over a proceeding, if any; otherwise it shall mean the head of the agency.”

(o) “Proof by preponderance of the evidence” means a demonstration by admissible evidence that a fact or legal conclusion is more probably true than not.

(p) “Public comment hearing” means a proceeding held pursuant to RSA 541-A:11.

(q) “Record” means, in a contested case, the materials set forth in RSA 541-A:31, VI.

(r) “Rulemaking petition” means a petition made pursuant to RSA 541-A:4,I.

PART Ac 203 FILING AND SERVICE OF DOCUMENTS

Ac 203.01 Filing of Documents with the Board.

(a) A document shall be considered filed when it is actually received at the board’s office in Concord and conforms to the requirements of this chapter. A document tendered for filing under this chapter that is patently and facially in violation of the board’s rules shall not be accepted for filing.

(b) All documents filed shall be filed with an original and a copy for each board member who will hear the case. However, only a single copy of correspondence, applications and complaints against licensees shall be filed.

Ac 203.02 Subscription and Veracity of Documents.

(a) All complaints, petitions, motions, and replies filed with the board shall be signed by the proponent of the document or, if the party appears by representative, by the representative.

(b) The applicant’s signature on a document filed with the board shall be certification that:

- (1) The applicant has read the document;
- (2) The applicant is authorized to file it;
- (3) To the best of the applicant’s knowledge, information, and belief, there are good grounds to support it; and

(4) The document has not been filed for purposes of delay or harassment.

(c) A willful violation of (b), above, shall cause the board to issue an order adverse to the party committing the violation.

Ac 203.03 Service of Documents.

(a) Complaints against licensees shall be filed with the board and shall comply with the requirements of Ac 204.02.

(b) All petitions, replies, motions, objections, exhibits, memoranda, or other documents filed in an adjudicative proceeding shall be served by the proponent upon all parties to the proceeding by:

(1) Depositing a copy of the document in the United States Postal Service, first class postage prepaid, addressed to the last address given to the board by the party being served, no later than the day the document is filed with the board; or

(2) Delivering a copy of the document in hand on or before the date it is filed with the board.

(c) Notwithstanding (b) above, petitions for rulemaking and petitions for declaratory rulings shall be filed with the board by the petitioner without service upon other persons and shall comply with the requirements of Ac 214.02.

(d) All notices, orders, decisions, or other documents issued by the board in the course of an adjudicative proceeding shall be served by the board upon all parties to the proceeding by either:

(1) Depositing a copy of the document, first class postage prepaid, in the United States Postal Service, addressed to the last address given to the board by the party being served; or

(2) If a party is not represented, delivering a copy of the document in hand to the party.

(e) When a party authorizes a representative, service shall be upon the representative.

(f) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the board, and required to be served upon the parties to an adjudicative proceeding, shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service, and the persons served.

Ac 203.04 Failure to Comply with Rules.

- (a) Failure to comply with the rules of this chapter shall result in:
 - (1) Refusal of a noncompliant document for filing;
 - (2) Denial or conditional denial of a noncompliant application, petition, or motion; or
 - (3) Issuance of an order adverse to noncompliant person.

PART Ac 205 APPEARANCE BEFORE THE BOARD

Ac 205.01 Representatives.

- (a) A natural person appearing before the board may choose to be represented by an individual who:
 - (1) Is a New Hampshire licensed attorney who has filed a written appearance with the board containing his or her business address and telephone number; or
 - (2) Is not a New Hampshire attorney, but has filed a written appearance that includes the following:
 - a. His or her daytime address;
 - b. His or her daytime telephone number, cellular phone number, or both, if he or she has one or both;
 - c. His or her electronic email address, if he or she has one;
 - d. A statement that he or she does not have any criminal convictions that have not been annulled, or, if he or she has any criminal convictions that have not been annulled, a description of all material facts relating to each such conviction;
 - e. If his or her occupation is regulated by any state or federal entity, a statement that he or she has not been found to have committed misconduct, or if he or she has been found to have committed misconduct, a description of all material facts relating to each finding;
 - f. A statement identifying each instance in which he or she has represented any other person in any other forum for the 3 years previous to the filing of the appearance;
 - g. A statement that he or she has never had sanctions imposed upon him or her for his or her conduct in his or her representation, or, if

any such sanction has been imposed, a description of all material facts relating to the imposition of every such sanction;

- h. A statement as to whether there are any criminal or misconduct proceedings pending against him or her, and if there are, a description of all material facts regarding such charges; and
- i. The signatures of the representative and the party or intervenor to be so represented.

(b) Corporations, partnerships and other legal entities that are not natural persons shall, pursuant to RSA 309-B:12, III, be represented only by:

- (1) An attorney licensed in New Hampshire; or
- (2) A duly authorized partner, officer, director, or shareholder member or manager who has filed an appearance as a representative that complies with (a)(2) above.

(c) Nothing in this section shall be construed to permit the unauthorized practice of law.

(d) The representative submitting an appearance pursuant to (a)(2) above shall, pursuant to RSA 311:1, be presumed to be of good character unless the appearance discloses one or more of the following:

- (1) He or she has been convicted of any misdemeanor or felony involving dishonesty within the 3 years immediately preceding the filing of the appearance;
- (2) He or she has been found to have committed misconduct by an occupational regulatory body of this or any other state or the federal government;
- (3) He or she has been sanctioned for his or her actions as a representative in any other forum within the 3 years immediately preceding the filing of the appearance; or
- (4) There is any pending criminal or misconduct charges against the representative and such charges relate to honesty.

(e) If an appearance filed pursuant to (a)(2) above discloses any of the circumstances listed in (d) above, the board shall prohibit the person from continuing as a representative in the proceeding and shall notify the person .

(f) The board shall, after providing notice and opportunity for hearing, restrict an individual from acting as a representative before the board when the representative's behavior obstructs the process.

PART Ac 206 PLEADINGS AND MOTIONS

Ac 206.01 Pleadings.

(a) The only pleadings permitted shall be petitions, other than for rulemaking, and replies to petitions. Complaints, motions, and applications related licensure shall not be considered pleadings.

(b) Petitions shall be in writing and contain:

- (1) The name and address of the petitioner;
- (2) The name and address of the petitioner's representative, if any;
- (3) A concise statement of the facts that warrant the relief requested from the board;
- (4) The description of the action that the petitioner wishes the board to take;
- (5) A citation to any statutes, rules, orders, or other authority that the petitioner believes entitles him or her to request that the board take the action described in (5) above; and
- (6) The petitioner's signature and the date of signature.

(c) Replies to petitions contain:

- (1) The name and address of the respondent;
- (2) The name and address of the representative of the respondent, if any;
- (3) A statement admitting or denying each fact alleged in the petition;
- (4) A statement admitting or denying the authority identified by the petitioner pursuant to Ac 206.01(b)(5);
- (5) A concise statement of any additional or different facts that warrant the board to act in the manner requested by the respondent;
- (6) A citation to any statutes, rules, orders or other authority, not identified in the petition, that the respondent believes has a bearing upon the subject matter of the petition;
- (7) A description of the action which the respondent wishes the board to take; and

(8) The respondent's signature and the date of signature.

(d) Replies shall be filed within 20 days from the date of the petition unless otherwise ordered by the board.

(e) Any fact contained in the petition which is not denied in the reply, shall be deemed admitted by the respondent for purposes of the petition. A statement that the respondent lacks sufficient knowledge to admit or deny shall be treated as a denial. The petitioner shall be presumed to deny all allegations in the reply, and no response shall be permitted to the reply.

(f) After receipt of a petition that complies with (b) above and any replies that comply with (c) – (e) above, the board shall review the documents and grant or deny the petition in whole or in part. Such decision shall be based upon the board's judgment as to whether the petition is consistent with and best implements the purposes of RSA 309-B.

Ac 206.03 Motions and Objections Thereto.

(a) Unless presented during an oral session of a proceeding, all motions and objections shall be in writing.

(b) Each motion shall state clearly and concisely:

(1) The purpose;

(2) The relief sought;

(3) The statutes, rules, orders, or other authority authorizing the relief sought; and

(4) The facts claimed to constitute grounds for the relief.

(c) Each objection to a motion shall state clearly and concisely:

(1) The defense of the party filing the reply;

(2) The action that the party filing the reply wishes the board to take;

(3) The statutes, rules, orders, or other authority authorizing the action in sought; and

(4) Any facts that are additional to, or different from, the facts stated in the motion or petition.

(d) An objection to a motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in the motion shall constitute the admission of that fact for the purpose of the objection. In the event a party filing an

objection to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party or intervenor shall so state, specifically identifying such fact.

(e) Motions shall be decided upon the writings submitted and oral argument, if the board determines that oral argument would assist the board in reaching a decision regarding a petition or motion. Repetitious motions shall not be submitted.

(f) Board decisions on motions shall be made as soon as practicable after the filing of the motion.

PART Ac 207 TIME PERIODS

Ac 207.01 Computation of Time. Any time period specified in an order shall begin with the day following the act, event, or default, and shall include the last day of the period, unless it is Saturday, Sunday, or state legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or state legal holiday. When the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded from the computation.

Ac 207.02 Change in Allowed Times. A motion for a change of time shall be granted upon concurrence of all parties.

Ac 207.03 Limitations. A motion to change time shall be filed at least 3 business days prior to the event in question.

PART Ac 208 PRESIDING OFFICER

Ac 208.01 Designation.

(a) Adjudicative proceedings commenced by the board shall be conducted by a presiding officer.

(b) The board shall appoint a board member or members of the board's staff to serve as presiding officer.

(c) The presiding officer shall serve in a conscientious and truthful manner or shall be removed by the board without notice or hearing.

Ac 208.02 Authority of Presiding Officer.

(a) The presiding officer shall possess all authority with respect to the procedural aspects of adjudicative proceedings that would be possessed by the board itself, including, but not limited to, the power to administer oaths and affirmations, direct the course of the proceedings, and decide procedural and discovery issues. However, subpoenas shall be issued only by the board, pursuant to RSA 309-B:12, III.

(b) The presiding officer shall receive no evidence or oral argument on the merits of the case unless at least 4 board members eligible to hear and decide the case, including the presiding officer if the presiding officer is a board member, are present.

(c) The presiding officer shall, to the extent consistent with the fair and orderly conduct of the proceeding, permit board members who are present during any stage of an adjudicative proceeding to query the witnesses.

(d) The presiding officer shall not accept final offers of settlement or impose consent decrees, but shall assist the participants in reaching proposed settlements. When a settlement has been proposed in writing, the presiding officer shall refer it to the board for decision, but shall not stay the proceeding while the board is deliberating the settlement proposal.

(e) The presiding officer shall not decide motions or enter orders that finally resolve the proceeding or stay the proceeding for more than 30 days. Potentially dispositive motions shall be referred to the board or deferred until the close of the record.

(f) If the presiding officer believes that a default or similar final order should enter against a party, the presiding officer shall issue a written recommendation to the board, with service on each party, and the board shall take appropriate action after allowing the parties 10 days to file objections thereto.

Ac 208.03 Exceptions to Rulings By the Presiding Officer.

(a) There shall be no interlocutory appeal to the board of procedural or discovery orders made by the presiding officer.

(b) After the close of the record, the parties and intervenors shall be provided 10 days to submit written exceptions to rulings of the presiding officer. The board shall rule upon any such exceptions and shall reopen or modify the record, if necessary or appropriate to effect relief.

Ac 208.04 Withdrawal of Presiding Officer.

(a) Upon his or her own initiative or upon the motion of any party or intervenor, the presiding officer shall withdraw from any adjudicative proceeding for good cause.

(b) Good cause shall exist if the presiding officer:

(1) Has a direct interest in the outcome of the matter, including but not limited to, a financial, business, or family relationship with any party to the proceeding;

(2) Has made statements or engaged in behavior that objectively demonstrates that he or she has prejudged the facts of the case; or

(3) Personally believes that he or she cannot fairly judge the facts of the case.

(c) Mere knowledge of the issues or acquaintance with any party or witness shall not constitute good cause for withdrawal.

PART Ac 209 COMMENCEMENT OF ADJUDICATIVE PROCEEDINGS

Ac 209.01 Scope. This part shall apply to and govern all adjudicative proceedings commenced by the board and shall not apply to rulemaking or declaratory ruling proceedings.

Ac 209.02 Commencement.

(a) The board shall commence an adjudicative proceeding by issuing a notice to each party and to each complainant, if any, at least 15 days before any prehearing conference and at least 30 days before any hearing.

(b) The notice commencing an adjudicative proceeding shall:

(1) Identify the parties to the proceeding as of the date of the order, inform each complainant of their right to intervene, and specify a deadline for the submission of petitions to intervene or statements by complainants that they intend to intervene;

(2) Briefly summarize the subject matter of the proceeding, and identify the issues to be resolved;

(3) Attach any complaint against the licensee that forms, in whole or in part, the basis of the issues to be resolved;

(4) Specify the statutory authority for the proposed action, and identify any applicable board rules;

(5) Specify the type of procedures to be followed;

(6) Specify the date by which, and the address where, appearances or motions by representatives shall be filed;

(7) Specify the date, time, and location of an initial prehearing conference or dates for an oral hearing;

(8) Identify the presiding officer for the proceeding if other than the chairperson of the board;

(9) Identify any confidentiality requirements applicable to the proceeding;

(10) Indicate that each party or intervenor has the right to be represented by an attorney but that such representation shall not be at the expense of the board;

(11) Indicate that each party or intervenor has the right to have the board arrange to have a certified shorthand court reporter present, at the requestor's expense, provided that such request is submitted at least 10 days prior to the proceeding and that if such an election is not made, then, pursuant to RSA 310-B:12, VII, a stenographic or electronic record will be made and filed with the board; and

(12) Contain such other information as the circumstances of the case may warrant including, but not limited to, orders consolidating or severing issues in the proceeding with other proceedings or orders directing the production of documents.

Ac 209.03 Docketing, Service of Notice, Public Notice.

(a) The board shall assign each adjudicative proceeding a docket number, and serve the hearing notice upon all parties to the proceeding. The hearing notice, including any attachments, shall be served upon the respondent by means of certified mail.

(b) Service of all subsequent orders, decisions and notices issued by the board, including any amendments to the hearing notice, shall be served upon the parties, by first class postal mail.

(c) Orders, notices, and decisions of the board, and motions, memoranda, exhibits, and other documents and data submitted to the board in a docketed case shall be kept in a docket file and made available for public inspection in the board's office except to the extent that confidentiality has been provided for under any provision of applicable law.

Ac 209.04 Intervention.

(a) Petitions for intervention may be filed any time after the issuance of a notice pursuant to Ac 209.03(a), and state:

(1) How the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the hearing, or how the petitioner qualifies for intervention under any provision of law;

(2) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and

(3) Any other reasons why the petitioner should be permitted to intervene.

(b) Petitions for intervention shall be granted if the petitioner's rights, duties, privileges, immunities or other substantial interest might be affected by the hearing or if the petitioner qualifies for intervention under any provision of law.

(c) Orders granting intervention shall be subject to modifications.

(d) As provided in (a) above, a person filing a complaint that becomes the subject of a disciplinary hearing shall be served with the hearing notice and notified of the right to intervene in the proceeding.

(e) Unless the complainant submits a petition for intervention that is granted or the complainant is called as a witness in the proceeding, the complainant shall have no role in the proceeding.

(f) Once granted leave to intervene and participate in the proceeding, an intervenor shall take the proceeding as they find it and no portion of the proceeding shall be repeated because of the fact of intervention.

Ac 209.05 Rights to Representation.

(a) Any party in an adjudicative proceeding may be represented, subject to complying with the requirements of Ac 205.01 at the earliest date practicable.

(b) Requests to the board to appoint counsel or otherwise arrange for representation shall be denied and the board shall assume no responsibility for expenses of any party.

Ac 209.06 Discovery and Disclosure. Upon the written request of a party, the board shall disclose to the each party any non-privileged information in the possession of the board and pertinent to the subject matter of the proceeding. Neither the board nor any officer or employee thereof, shall be subject to further discovery.

Ac 209.07 Subpoena.

(a) A subpoena for the attendance of witnesses or the production of evidence in disciplinary proceedings shall, pursuant to RSA 309-B:12, III, be issued only upon the order of the board.

(b) A subpoena shall be issued on the initiative of the board or in response to the motion of a party or intervenor.

(c) A party or intervenor who moves for a subpoena shall attach a copy of the proposed subpoena to its motion. If the motion is granted, the requesting party or intervenor shall be responsible for the service of the subpoena and payment of any witness fee and mileage expenses that may be required.

(d) The person to whom the subpoena is directed may, within 10 days after service of the subpoena, or before the date specified by the board in the subpoena for compliance therewith, whichever is earlier, file a motion to quash or modify the subpoena.

(e) If the motion to quash or modify the subpoena fails to refute the rationale for the subpoena and the motion is denied, in whole or in part, the person to whom the subpoena is directed shall comply with the subpoena, within the time prescribed in the subpoena, unless the board expressly provides additional time to comply.

(f) A subpoena shall be served by any person who is 18 years of age or older, and in the manner authorized for service of subpoenas in the New Hampshire superior court. The fact of service shall be written on the reverse of the original copy of the subpoena by the person making service and a copy shall be immediately returned to the board by the person making service.

(i) Should any person fail to comply with a subpoena issued pursuant to this section, the board shall either enter an order adverse to the party who fails to comply, or direct the party on whose behalf the subpoena was issued, to seek judicial enforcement of the subpoena.

Ac 209.08 Ex Parte Communications. Once a notice of hearing has been issued in an adjudicative proceeding, no party shall communicate with any member of the board or the presiding officer who will render a decision in the case concerning the merits of the case except upon notice to the other parties and an opportunity for such party or parties to participate. In accordance with the rules of this chapter, no party shall cause another person to make such communications or otherwise engage in conduct prohibited by RSA 541-A:36.

Ac 209.09 Consolidation. Whenever it shall appear to the board, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues, the board shall, as fairness and efficiency permit, consolidate those proceedings for hearing, or decision, or both.

Ac 209.10 Severance. Whenever it shall appear to the board, upon motion or its own initiative, that injury to the substantial rights of a party or undue delay may be thereby avoided, the board shall, as fairness and efficiency permit, sever one or more issues from a proceeding, and dispose of those issues in another proceeding.

PART Ac 210 ADJUDICATIVE PROCEEDING PROCESS

Ac 210.01 Prehearing Conferences.

(a) The board shall, upon its own initiative or upon motion, encourage all parties to attend one or more prehearing conference(s) to aid in the disposition of the proceeding.

(b) The following shall be considered at a prehearing conference:

- (1) Opportunities and procedures for settlement;
- (2) Opportunities and procedures for simplification of the issues;

- (3) Possible amendments to the pleadings;
- (4) Possible admissions of facts and of documents to avoid unnecessary proof;
- (5) Possible limitations on the number of witnesses;
- (6) Possible changes to the standard procedures that would otherwise govern the proceeding;
- (7) The distribution of written testimony, if any, and exhibits to the parties;
- (8) Possible consolidation of the examination of witnesses by the parties; and
- (9) Any other matters that might contribute to the prompt and orderly conduct of the proceedings.

(c) The board shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record. Matters decided at a prehearing conference shall be reflected in an appropriate order.

Ac 210.02 Burden of Proof. The party asserting the affirmative of a proposition and each movant shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

Ac 210.03 Methods of Proceeding.

(a) Where there are no disputes as to the material facts involved in the subject matter of the proceeding, offers of settlement shall be entertained.

(b) Where facts material to the subject matter of the proceedings are in dispute, the proceeding shall consist of a trial-type evidentiary hearing with the subsequent submission of memoranda as appropriate.

(c) Oral argument and brief opening and closing statements shall be permitted when requested in a written motion that includes the proposed arguments. Written arguments in the form of legal briefs or memoranda shall be permitted subject to such filing schedules that allow for timely hearing, adequate preparation time for parties' response.

(d) The board shall schedule a hearing or require the submission of additional evidence at any time, including the ordering of supplemental hearings if the board determines that such are necessary for a full and true disclosure of the facts of the case.

Ac 210.04 Evidence.

(a) Proceedings shall not be conducted under the rules of evidence but, pursuant to RSA 541-A:33, II, the evidentiary privileges recognized by the law of New Hampshire shall apply to proceedings under this chapter.

(b) All data that will reasonably assist the board arrive at the truth shall be admissible, except that irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(c) Evidence shall be submitted in written or oral form to assure the full and fair disclosure of the facts.

(d) If the board takes official notice of a fact, it shall so state, and permit any party the opportunity to show the contrary.

(e) Witnesses appearing before the board shall testify under oath or affirmation administered by the presiding officer.

(f) The board shall cause a tape recording or stenographic record to be made of hearings and prehearing conferences but in a disciplinary hearing the record shall be made by a certified shorthand court reporter at the request and expense of a party or intervenor. This record shall not be transcribed unless a request is made by a party or intervenor who agrees to pay the cost of the transcription, or unless the board elects to transcribe the record on its own initiative, in which case any party or intervenor who requests a copy of the transcript shall pay copying costs, only.

Ac 210.05 Continuances.

(a) Any party to a hearing may make an oral or written motion that a hearing be postponed to a later date or time.

(b) If a continuance is requested pursuant to (a) above, it shall be granted if the presiding officer determines that good cause has been demonstrated. Good cause shall include the unavailability of any party, witness, attorney, or other representative necessary to conduct the hearing, the likelihood that a hearing will not be necessary because the parties have reached a settlement or any other circumstances that demonstrate that a continuance would assist resolving the case fairly.

(c) If the later date, time, and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the time of the hearing that is being postponed, the presiding officer shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as practicable.

Ac 210.06 Inquiry By Board Members. Except as provided by RSA 309-B:12, IV, and subject to the direction of the presiding officer who shall regulate the time and manner of speaking in an orderly fashion, board members present during and participating in an adjudicative proceeding shall question witnesses and make such

inquiry of witnesses, as they believe appropriate for a full and true disclosure of the facts of the case.

Ac 210.07 Proposed Findings of Fact and Conclusions of Law. Each party or intervenor may submit written proposed findings of fact and conclusions of law. The board shall include individual rulings upon each such proposed finding or conclusion as part of its final decision.

PART Ac 211 DECISIONS AND ORDERS

Ac 211.01 Decisions and Orders.

- (a) The board shall issue a decision and order based on:
 - (1) A hearing attended by a quorum of the board; or
 - (2) A written proposed settlement agreement.
- (b) The decision and order shall be in writing and dated.
- (c) A board member shall not participate in rendering a decision if he or she has not personally been present to hear all of the testimony in the case, unless the disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating all testimony and other evidence.
- (d) If a presiding officer has been delegated the authority to draft a proposed decision and order, the presiding officer shall submit to the board a written proposed decision and order containing:
 - (1) The disposition proposed by the presiding officer;
 - (2) A statement of the reasons for the proposed disposition;
 - (3) Findings of fact and rulings of law necessary to the proposed disposition;
and
 - (4) Any order necessary to effectuate the disposition.
- (e) If a proposed disposition submitted pursuant to paragraph (d) is adverse to any party or intervenor, the board shall:
 - (1) Serve a copy of it on each party and intervenor; and
 - (2) Provide an opportunity to file objections and present briefs and oral arguments to the board.

(f) The board shall keep a final decision in its records for at least 5 years following their dates of issuance, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

PART Ac 213 RECONSIDERATION AND STAY

Ac 213.01 Motion for Reconsideration.

(a) An adjudicative order of the board shall not be final until the date it is served upon the parties pursuant to Ac 203.03(d).

(b) Within 30 days after service of a final adjudicative order of the board, any party may file a motion for reconsideration. No distinction shall be made between the terms “reconsideration” and “rehearing” for purposes of RSA 541:3.

(c) A motion for reconsideration of a proposed board order shall comply with Ac 206.03(a) and (b).

(d) A motion for reconsideration shall be filed within 30 days of the date of the board’s decision or order.

(e) A motion for reconsideration shall:

(1) Identify each error of fact, error of reasoning, or error of law that the movant wishes to have reconsidered;

(2) Set forth fully every ground upon which it is claimed that the decision or order is unlawful or unreasonable, or based upon a mistake of fact or law;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the movant; and

(4) Include any argument or memorandum of law the movant wishes to file.

(f) A motion for reconsideration shall be granted if it demonstrates that the board’s decision or order is unlawful or unreasonable, or based upon a mistake of fact or law.

Ac 213.02 Reconsideration on the Board’s Own Motion.

(a) Within the time frame specified in Ac 213.01(b), the board shall reconsider, revise, reverse or affirm any final action on its own motion.

(b) If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the board believes further argument or evidence should be considered to eliminate a possible mistake of fact or conclusion of law, an appropriate

order providing the parties and intervenors with notice and opportunity to be heard shall be issued before any revision is made in the board's previous action.

Ac 213.03 Stay of Board Orders.

(a) A stay of board action shall be specifically requested. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but a motion for stay may be combined with a motion for reconsideration.

(b) A motion for stay shall be granted only if it is filed with a motion for reconsideration and within the time period specified by Ac 213.01(b). Such a motion for stay shall be granted if the board determines that the licensee would suffer irreparable harm and the movant demonstrates a likelihood of success with respect to the motion for reconsideration. If granted, a stay shall remain in effect unless and until the board denies the motion for reconsideration.

(c) The board, acting on its own motion, shall stay the effect of any board order to allow submission of additional exhibits or testimony within the time period specified in Ac 213.01(b).

Adopt Ac 214.01 – Ac 214.03 and Ac 215 to read as follows:

PART Ac 214 RULEMAKING

Ac 214.01 How Adopted. A board rule, or any amendment or repeal thereof, shall be proposed, adopted, and filed in accordance with RSA 541-A:5 through RSA 541-A:16 for 8-year and non-expiring rules, RSA 541-A:18 for emergency rules, and RSA 541-A:19 for interim rules.

Ac 214.02 Petition for Rulemaking.

(a) Any person may request the board to commence a proceeding for the purpose of adopting, amending, or repealing a rule by filing a written petition that contains:

- (1) A statement of the petitioner's request for the proposed rule;
- (2) The text of the proposed rule or a statement of the particular results intended by the petitioner's interest in the subject matter of the proposed rule;
- (3) An identification of the particular rule sought to be amended or repealed;
- (4) Any data or argument the petitioner believes would be useful to the board in deciding whether to commence a rulemaking proceeding; and
- (5) Name, address, signature of petitioner and date of signature.

Ac 214.03 Disposition of Petitions for Rulemaking.

(a) The board shall request additional information or argument from the petitioner for rulemaking or from others if such additional information or argument is required to reach a reasoned decision.

(b) The board shall grant the petition for rulemaking unless the adoption, amendment, or repeal sought would result in:

- (1) A rule that is not within the rulemaking authority of the board;
- (2) Duplication of a rule or of a statutory provision;
- (3) Inconsistency between the existing rules and the statutory mandate of the board;
- (4) Inconsistency of administrative rules one with another; or
- (5) Excessive burden upon the board in terms of cost or a reduction in efficiency or effectiveness.

(c) Within 30 days of receipt of a sufficient petition the board shall dispose of it in the following manner:

- (1) By notifying the petitioner that the petition is granted and beginning rulemaking proceedings as required by RSA 541-A:4; or
- (2) By notifying the petitioner in writing that the petition is denied and the reasons for its denial.

(d) The denial of a petition for rulemaking shall not entitle the petitioner to a hearing.

PART Ac 215 DECLARATORY RULINGS

Ac 215.01 Petitions.

(a) Any person may request a declaratory ruling from the board on matters within its jurisdiction by filing an original and 11 copies of a petition pursuant to Ac 206.01(b).

(b) Such a petition shall also set forth the following information:

- (1) The exact ruling being requested;
- (2) The statutory and factual basis for ruling, including any supporting affidavits or memoranda of a law; and

- (3) A statement as to how and why the issuance of a ruling on this subject would benefit the petitioner.

Ac 215.02 Action on Petitions.

- (a) The petitioner shall provide such further information or participate in such evidentiary or other proceedings as the board shall direct after reviewing the petition and any replies received.
- (b) Upon review and consideration, the board shall within 90 days respond to the petition giving its decision in writing.
- (c) The decision shall be in accordance with Ac 206.01(c).

APPENDIX: Cross-Reference Table for Statutes Implemented

<u>Rule</u>	<u>Statute Implemented</u>
Ac 201 – Ac 202	RSA 541-A:7 and RSA 541-A:8
Ac 203	RSA 541-A:16, I(b)
Ac 205	RSA 309-B:12, III, and RSA 541-A:16, I(b)
Ac 206	RSA 541-A:16, I(b)
Ac 207	RSA 541-A:30-a, III(f)
Ac 208	RSA 541-A:1, XIV; RSA 541-A:16, I(b); and RSA 541-A:30-a, III(k)
Ac 209.01	RSA 541-A:8
Ac 209.02	RSA 309-B:12, I, and RSA 541-A:31, III
Ac 209.03	RSA 541-A:16, I(b)(2)
Ac 209.04	RSA 541-A:32
Ac 209.05	RSA 309-B:12, III
Ac 209.06	RSA 309-B:12, II, and RSA 541-A:30-a, III(c)
Ac 209.07	RSA 309-B:11, I, and RSA 309-B:12, III
Ac 209.08	RSA 541-A:36
Ac 209.09	RSA 541-A:16, I(b)(2)
Ac 209.10	RSA 541-A:16, I(b)(2)
Ac 210	RSA 541-A:16, I(b)(2)
Ac 210.01	RSA 541-A:31, V(b) – (d)
Ac 210.02	RSA RSA 541-A:30-a, III(d) and (e)
Ac 210.04	RSA 541-A:33
Ac 210.05	RSA 541-A:30-a, III(h)
Ac 210.07	RSA 541-A:35
Ac 211.01	RSA 309-B:12, VIII, and RSA 541-A:35
Ac 213	RSA 309-B:12, X, and RSA 541:4
Ac 214	RSA 541-A:16, I(c)
Ac 215	RSA 541-A:16, I(d)